ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK X

CV-11 1884

NICHOLAS SCIORTINO , individually and as the Executor of the Estate of MICHAEL J. SCIORTINO, deceased

Plaintiff,

DOCKET NO.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 15 2011 ★

LONG ISLAND OFFICE

-against- (S.F.)

COMPLAINT

COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT, and POLICE OFFICER SALVATORE CURCIO, in his individual and official capacity, POLICE OFFICER FRANK PELO, in his individual and official capacity, and JOHN DOE 1-10, in their individual and official capacities,

SPATT, J.

LINDSAY, M.

Defendants.

JURY TRIAL DEMANDED

X

Plaintiffs, by their attorneys, THE LAW OFFICES OF FREDERICK K. BREWINGTON, as and for their Complaint against the above captioned Defendants, respectfully set forth as follows:

INTRODUCTION AND GENERAL ALLEGATIONS

1. This is an action for money damages and a declaratory judgment against the above captioned Defendants, individually and collectively, for committing acts under color of law that deprived Plaintiffs of their rights as secured by the Constitution and laws of the United States and the State of New York, including denial of due process and equal protection under the law, assault and battery, unlawful use of excessive force, negligence, intentional infliction of emotional distress, , failure to properly train, negligent supervision, in violation of 42 U.S.C.§ 1983 (including Municipal Liability, and violations of the Fourth, Fifth and Fourteenth Amendments of the United States Constitution), and related state law claims as set forth below.

2. Upon information and belief, Defendants POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, acted individually and collectively and under color of law on the night of January 16, 2010, when said Defendant POLICE OFFICERS

illegally and unlawfully assaulted, MICHAEL J. SCIORTINO, abused, harassed, cuffed and restrained, made to fear for his life, made to suffer, injured physically and mentally, imprisoned, arrested, seized and searched, and otherwise harmed without just cause, battered, and used excessive and unnecessary force, causing severe physical harm, extreme pain and suffering such injuries in violation of Mr. Sciortino's constitutional and civil rights.

3. Upon information and belief, Defendants COUNTY OF NASSAU, and NASSAU COUNTY POLICE DEPARTMENT, as part of a pattern, practice and custom, failed to properly investigate, supervise and discipline the actions of Defendant POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, before, during and after the improper assault, beating, and use of excessive force, of Plaintiff's decedent, MICHAEL J. SCIORTINO.

4. Upon information and belief, The Defendants NASSAU COUNTY and NASSAU COUNTY POLICE DEPARTMENT had a to duty train, supervise and discipline police officers, including the Defendant police officers, and were negligent in their training, hiring, supervising and disciplining of POLICE OFFICERS JOHN DOE 1-10. Defendants COUNTY OF NASSAU, and NASSAU COUNTY POLICE DEPARTMENT, were negligent in training, hiring and supervising Defendants POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, thus leading to the unjustified use of excessive force, assault, and false arrest against MICHAEL J. SCIORTINO.

5. Upon information and belief, Defendants POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, without lawful justification and based on an intent to deprive MICHAEL J. SCIORTINO of his rights, acted with the knowledge that their wrongful conduct had the tacit authorization of the COUNTY OF NASSAU, and the NASSAU COUNTY POLICE DEPARTMENT. With such tacit authorization and condonement, Defendant

POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, proceeded to use unnecessary force, and negligently, purposefully, intentionally, maliciously and violently beat, assaulted, restrained, hit, and injured MICHAEL J. SCIORTINO about his body, and head, causing multiple wounds, without care or caution as to their acts leading to and causing the painful and severe injuries to said MICHAEL J. SCIORTINO which resulted in pain and suffering.

6. After said unlawful abuse, beating and restraint, upon strong information and belief, the Defendant POLICE OFFICER SALVATORE CURCIO, POLICE OFFICER FRANK PELO, and "JOHN DOE" 1 through10, collectively contrived facts and a false story, in an attempt to justify their wrongful beating, assault, and excessive force visited upon MICHAEL SCIORTINO.

JURISDICTION AND VENUE

7. This action is brought pursuant to 42 U.S.C. §§ 1983, and 1988 and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. Sections 1331 and 1343(3) and (4) and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. § 1367, to hear and decide any and all claims arising under state law.

8. Prior hereto and within the proper time allotted, Plaintiff NICHOLAS SCIORTINO, filed an *Amended Notice of Claim* in compliance with General Municipal Law Section 50 et. seq. and CPLR 215, as against each municipal Defendant. More than 90 days have elapsed since the November 11, 2010 filing of the *Amended Notice of Claim,* and Defendants have failed and refused to pay or adjust same. Plaintiff NICHOLAS SCIORTINO has complied with all conditions precedent to filing the within *Complaint*.

9. Venue for this action is the Eastern District of New York based on Plaintiffs' residence,

and the place where the actions complained of herein occurred.

PARTIES

10. During all times mentioned in this complaint, Plaintiffs' decedent, MICHAEL J. SCIORTINO was, prior to his death, a resident of the United States residing in the State of New York and the County of Nassau.

11. During all times relevant, Plaintiff NICHOLAS SCIORTINO, was the son of the decedent MICHAEL J. SCIORTINO, and is currently the Executor of the Estate of MICHAEL J. SCIORTINO. Plaintiff NICHOLAS SCIORTINO is a resident of the United States, residing in the State of New York, and the County of Nassau.

12. During all times relevant, Defendant COUNTY OF NASSAU (hereinafter "COUNTY") is and was a duly constituted municipal corporation of the State of New York.

13. During all times relevant, Defendant NASSAU COUNTY POLICE DEPARTMENT (hereinafter POLICE DEPARTMENT) is, and was, an entity/agency of the COUNTY OF NASSAU.

14. During all times relevant, Defendant POLICE OFFICER SALVATORE CURCIO (hereinafter CURCIO), sued herein in his individual and official capacities is employed as a Police Officer by Defendants, COUNTY and NASSAU COUNTY POLICE DEPARTMENT.

15. During all times relevant, Defendant POLICE OFFICER FRANK PELO (hereinafter PELO), sued herein in his individual and official capacities is employed as a Police Officer by Defendants, COUNTY and NASSAU COUNTY POLICE DEPARTMENT.

16. During all times relevant, Defendant POLICE OFFICERS JOHN DOE 1-10 (hereinafter OFFICERS) currently unknown to the Plaintiff, but known to the Defendants, sued here in their individual and official capacity, are employed as Police Officers by Defendants COUNTY and POLICE DEPARTMENT.

STATEMENT OF FACTS

17. At all times relevant, MICHAEL J. SCIORTINO, deceased, was ninety (90) years of age having been born on September 16, 1919. Mr. Sciortino was a widower.

18. Upon information and belief, Mr. Sciortino developed dementia, and could no longer reside at his home. As a result, the decision to place Mr. Sciortino into an assisted living facility was made. On or about February 18, 2009, Mr. Sciortino moved into Harbor House/Oyster Bay Manor Assisted Living, 150 South Street, Oyster Bay, New York 11771.

19. At all times prior to January 16, 2010, Mr. Sciortino was ambulatory.

20. Upon information and belief, on Friday, January 16, 2010, at approximately 3:30 a.m., Mr. Sciortino was very upset and agitated. Upon arrival to attend to Mr. Sciortino, two of Harbor House employees noticed that Mr. Sciortino had a minor injury on his right arm, near his wrist, and that it was bleeding. Mr. Linwood Lilly was one of two Harbor House employees to attend to Mr. Sciortino on this date.

21. Upon information and belief, while Mr. Lilly remained with Mr. Sciortino, Mr. Lilly's co-worker left to retrieve the first aid kit to try and bandage Mr. Sciortino. However, Mr. Sciortino would not allow anyone to touch him, including Mr. Lilly and his co-worker.

22. Upon information and belief, Mr. Lilly's co-worker decided to call the police and ambulance, because he was afraid that Mr. Sciortino would injure himself.

23. Upon information and belief, while Mr. Lilly's co-worker was gone, Mr. Lilly was able to speak with and calm Mr. Sciortino, and get him to sit on his bed. He remained on his bed and remained calm.

24. When the Defendants CURCIO and PELO arrived, Mr. Sciortino was no longer agitated, and was sitting calmly on his bed. He was not a threat to injure himself, or anyone else.

25. When the Defendants CURCIO and PELO arrived at Mr. Sciortino's room, one of the officers was holding three (3) towels in his hand.

26. Immediately upon entering his room, the Defendant Officer holding the towels struck Mr. Sciortino in the face with the three (3) towels.

27. Defendant Police Officer dropped the towels on the floor, picked them up and again struck Mr. Sciortino. Mr. Sciortino remained sitting on the bed.

28. One of the Defendant Police Officers jumped on the bed on top of Mr. Sciortino, and with his forearm, continued to beat and slam Mr. Sciortino's head into the mattress several times.

29. While one Officer was beating Mr. Sciortino, the other Defendant Police Officer also jumped on Mr. Sciortino's bed, got on top of Mr. Sciortino, forcing his knees on Mr. Sciortino pinning him to the bed.

30. Mr. Lilly witnessed bleeding on both of Mr. Sciortino's arms. Immediately, he yelled at Defendants CURCIO and PELO asking them "what the hell are you doing?" Defendant Police Officers ignored Mr. Lilly's pleas.

31. CURCIO and PELO began to handcuff Mr. Sciortino behind his back.

32. Mr. Lilly sought to support Ms. Sciortino's arms, but withdrew when it appeared to him that because of the amount of force that the Defendants CURCIO and PELO were using against Mr. Sciortino, Defendant Police Officers would break Mr. Sciortino's arms. Mr. Sciortino was handcuffed behind his back. He was effectively under arrest.

33. Immediately after he was handcuffed, Defendants CURCIO and PELO slammed Mr. Sciortino the floor.

34. While he was on the floor, Defendants CURCIO and PELO pushed Mr. Sciortino face across the floor causing rugs burns to his face.

35. While he was on the floor, Defendant Police Officers beat Mr. Sciortino causing his nose to bleed.

36. Mr. Lilly sat Mr. Sciortino back on his bed, and placed towels on his face in an effort to stop the bleeding of Mr. Sciortino's face and arms.

37. Defendants CURCIO and PELO transported Mr. Sciortino to Nassau University Medical Center. While being transported, Mr. Sciortino remained in restraints.

While at the hospital, Defendants kept Mr. Sciortino in restraints, although he was never a threat to the safety of anyone.

38. As a result of the abuse suffered at the hands of Defendants CURCIO and PELO, Mr. Sciortino's health drastically declined. Such arrest and/or abuse was not justified or authorized.

39. Defendants COUNTY and POLICE DEPARTMENT disregarded its duty of supervision, training, and maintenance of its departments, agencies, and those acting under their directions, behest, and control, was negligent, careless, and reckless, in failing to properly investigate and/or evaluate the results of any investigation of those persons, agents, servants and/or employees hired to protect and serve the public as police officers.

40. Defendant COUNTY and POLICE DEPARTMENT failed to hire efficient and/or sufficient personnel in that Defendant Police Officers lacked the experience, deportment, maturity, sensibility and intelligence to act as an official police officer.

41. Defendant COUNTY and POLICE DEPARTMENT failed to exercise due care and caution in its hiring practices, and in particular, in hiring employees who lacked the mental capacity and ability to function as employees of Defendant.

42. Defendant COUNTY and POLICE DEPARTMENT failed to investigate the background of Defendants CURCIO and PELO, and in negligently hired and retained said Defendant Officers who

lacked the maturity, sensibility and intelligence to be employed by Defendant COUNTY and POLICE DEPARTMENT in such a capacity for which they were hired.

43. Defendant COUNTY and POLICE DEPARTMENT knew or should have known Defendant CURCIO's and PELO's lack of ability, experience, deportment and maturity.

44. Defendant COUNTY and POLICE DEPARTMENT failed to properly train and supervise its employees in the proper manner, failed to train its employees in the proper methods of assessing situations, failed to train its employees in the proper manner in which to handle matters similar to the subject incident, failed to train its employees to control their tempers and exercise the proper deportment and temperament, and to otherwise act as reasonable and prudent police officers.

45. Defendants COUNTY and POLICE DEPARTMENT failed to investigate, discipline, or control Defendants CURCIO and PELO with respect to their inclination towards brutality and use of excessive force against individuals of the public;

46. Defendants COUNTY and POLICE DEPARTMENT failed to train Defendants CURCIO and PELO to avoid use of excessive force, and failed to discipline CURCIO and PELO for inflicting excessive force upon Mr. Sciortino.

47. Defendants COUNTY and POLICE DEPARTMENT failed to promulgate proper and/or adequate rules and regulations governing the proper protocol in handling matters involving the mentally disturbed.

48. Defendants CURCIO and PELO failed to use such care in the performance of their duties as a reasonable prudent and careful police officer would have used in circumstances involving the mentally disturbed.

49. Defendants CURCIO and PELO physically mis-handled MICHAEL J. SCIORTINO, and intentionally, willfully, maliciously, and without just cause or provocation and with great force and

violence, seized, assaulted, and battered, MICHAEL J. SCIORTINO, a frail ninety (90) year old man.

50. Defendants CURCIO and PELO failed to seek appropriate assistance, guidance, and intervention from police and other sources, failed to follow acceptable, and established general protocols, failed to follow protocol as to taking action without supervisory intervention, and in otherwise being careless, unreasonable, negligent, grossly negligent, and reckless.

AS AND FOR COUNT ONE
42 U.S.C. § 1983 - FOURTH, FIFTH, AND
FOURTEENTH AMENDMENT VIOLATIONS
FALSE ARREST, EQUAL PROTECTION AND DUE PROCESS

51. Plaintiffs repeat, reiterate and reallege each and every allegation contained in ¶¶ 1 through 50 of this Complaint with the same force and effect as though fully set forth herein.

52. The Defendants COUNTY, POLICE DEPARTMENT, acting under color of law and powers proscribed to them by the United States Constitution, federal and state laws, violated the Fourth, Fifth, and Fourteenth Amendment and 42 U.S.C. §1983, by subjecting the Plaintiff's decedent, MICHAEL J. SCIORTINO, to unequal treatment under the law, by way of their unauthorized, and false arrest, excessively harsh brutality, unduly forceful restraint, and excessive use of brutal force. Defendants' improper and wrongful arrest without any violation of the law and absent probable cause or any reasonable suspicion of any criminal activity.

53. Defendants COUNTY, POLICE DEPARTMENT CURCIO, PELO, and POLICE OFFICERS, failed to provide due process of law and/or equal protection of the Plaintiff's decedent's rights, when compared to those rights of a non-disabled person, in that said Defendants failed to provide NICHOLAS SCIORTINO and his family with the same level of investigation, discipline and/ or action taken to redress the wrongs visited upon MICHAEL J. SCIORTINO, as such Defendants would exercise and provide after the abuse and injury of a non-disabled person who did not suffer from mental illness.

54. Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE

OFFICERS, were further disparate in their treatment of the mentally ill/mentally disabled, and were reckless, negligent and/or deliberately indifferent in their training, hiring and supervision of their police officers, including Defendant Officers, with respect to the use of force against mentally ill, the inquiry of mentally disturbed persons, the bringing of charges against mentally disturbed persons and the recognition and preservation of the civil and constitutional rights of mentally disturbed persons.

55. Defendants COUNTY and POLICE DEPARTMENT promoted and enabled procedures permitting the type of actions taken by Defendant POLICE OFFICERS, which resulted in the violation of MICHAEL J. SCIORTINO's constitutional and civil rights, and which further physically harmed him. Defendants COUNTY and POLICE DEPARTMENT failed to promulgate procedures and/or monitor and enforce compliance with established policies and procedures for the handling of mentally ill or emotionally disturbed persons, which resulted in the violation of MICHAEL J. SCIORTINO's constitutional and civil rights, as well as physical harm to him.

56. As a result of the actions and failures of Defendants COUNTY and POLICE DEPARTMENT, did not employ appropriate procedures to physically safeguard MICHAEL J. SCIORTINO, a mentally aided person, especially with respect to their preparation for and initial contact with him, attempts to falsely arrest him, contain him, attempts to take him into custody, failure to use protective devices, failure to call for back-up, special units and/or supervisors who were experienced with addressing the mentally aided, use of excessive force, and failure to employ the assistance of health care professionals on the premises, and to minimize the escalation of the inappropriate physical force used against him.

57. Defendants COUNTY and POLICE DEPARTMENT had a duty to investigate and discipline its police officers for misconduct, including any of the Defendants CURCIO, PELO and POLICE OFFICERS, with respect to their use of force against mentally ill persons, their inquiries of

mentally ill persons, the use of restraint against mentally ill persons, and the recognition and preservation of the civil and constitutional rights of mentally ill persons.

58. The aforesaid Defendants provided such a lack of equal protection to the mentally ill deceased MICHAEL J. SCIORTINO, based upon their disdain and/or disregard for the rights of the mentally ill, and based upon a wanton prejudice towards such persons. Said acts violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and further violate 42 U.S.C. §1983.

59. As a direct result of the above acts and omissions, the Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS, caused direct physical and emotional injuries to MICHAEL J. SCIORTINO, and have caused his family to suffer, including pain and suffering, physical trauma, emotional trauma.

60. As a direct result of the above acts and omissions, the Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS, further caused intense physical and emotional suffering to MICHAEL J. SCIORTINO, prior to the MICHAEL J. SCIORTINO's death on July 25, 2010. Said acts further caused intense emotional distress, loss of consortium, comfort and companionship, loss of benefits and services of a pecuniary nature, and other such pain and suffering for NICHOLAS SCIORTINO, for the harm, suffering and injury of NICHOLAS SCIORTINO 's father, and caused such unbearable grief, sadness, depression, and anger, with resultant effects on NICHOLAS SCIORTINO's physical health and well-being.

61. All of the above referenced Defendants took the above actions under color of law, acting in both their individual and official capacities, in using unnecessary and excessive force by Defendant police officers, to restrain the unarmed, emotionally fragile decedent, MICHAEL J. SCIORTINO.

62. The vicious beating, assault, restraining, of Plaintiff MICHAEL J. SCIORTINO and

other wrongful acts conducted against the Plaintiffs' decedent based on MICHAEL J. SCIORTINO's mental illness, including but not limited to acts taken by Defendant Officers and the entity Defendants, constituted a violation of Plaintiff's decedent's rights, secured by the Fourteenth Amendment to the United States Constitution, to be guaranteed the same procedural and substantive protections and safeguards, and the same standard of reaction by police officers as that given in a comparable situation, involving the restraint of a non-mentally disabled person by Defendants CURCIO, PELO and POLICE OFFICERS.

63. As a consequence of Defendants' wrongful actions, negligent behavior, and violation of state and federal laws, Plaintiffs' decedent was deprived of his freedom and life, was made to suffer physical injuries, great pain and suffering, and was subjected to great fear and terror and personal humiliation and degradation, and continued to suffer physical pain and mental and emotional distress as a result of the aforesaid unlawful conduct of Defendant Officers until he was caused to surrender to his wounds and die.

64. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million($10,000,000.00) dollars . As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT TWO
42 U.S.C. § 1983 - EXCESSIVE USE OF FORCE

65. Plaintiffs repeat, reiterate and reallege each and every allegation contained in ¶¶ 1 through 64 of this Complaint with the same force and effect as though fully set forth herein.

66. The accusations of wrongful actions against Plaintiffs' decedent were false and were an attempt to cover up the brutal beating, which had been inflicted on Plaintiffs' decedent by Defendant

OFFICERS.

67. The vicious beating, and other wrongful acts and level of physical force conducted against the Plaintiffs' decedent, MICHAEL J. SCIORTINO by Defendants, including, but not limited to Defendant Officers, constituted unreasonable, unnecessary and excessive use of force by a police officer, far beyond any potential alleged perceived threat. As such, Defendants were negligent, reckless, unreasonable and unauthorized, as Defendants had a duty to not subject Plaintiffs' decedent to vicious and excessive police actions, but failed to prevent same and breached their duty. Said acts violate the Fourteenth and Fourth Amendment, and 42 U.S.C.§1983.

68. Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS, further used unnecessary, and excessive force against MICHAEL J. SCIORTINO without lawful justification, by improper use of force against the mentally ill, MICHAEL J. SCIORTINO, failed to use or promulgate procedures and/or monitor and enforce compliance with established policies and procedures, for the handling of mentally ill or emotionally disturbed persons, which resulted in the excessive force/violation of MICHAEL J. SCIORTINO's constitutional and civil rights, as well as physical harm to him.

69. As a result of the actions and failures of Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS did not employ appropriate measures of force to contain and physically safeguard MICHAEL J. SCIORTINO, a mentally aided person, especially with respect to their preparation for and initial contact with him, attempts to contain him, attempts to take him into custody, failure to use protective devices, failure to call for back-up, special units and/or supervisors who were experienced with addressing the mentally aided, and resultant use of unreasonable force for the situation of restraining the frail, unarmed MICHAEL J. SCIORTINO, use of excessive force, and failure to employ the assistance of family and health care providers on the premises, and to

minimize the escalation of inappropriate, excessive physical force used against him.

70. As a consequence of the Defendants' use of excessive force and Defendants' wrongful actions, negligent behavior and violation of state and federal laws, Plaintiffs' decedent was deprived of his freedom and life for ever, was seriously physically injured, and was subjected to great fear and terror and personal humiliation and degradation, and suffered great physical pain and impairment, mental and emotional distress as a result of the aforesaid unlawful conduct of Defendant Officers and the other Defendants.

71. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO, as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00) dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT THREE
42 U.S.C. § 1983 - MUNICIPAL VIOLATIONS

72. The Plaintiffs repeat, reiterate and reallege each and every allegation contained in ¶¶ 1 through 71of this Complaint with the same force and effect as though fully set forth herein.

73. Prior to January 16, 2010, and in the time since said that date, the Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO, AND POLICE OFFICERS, have permitted, tolerated and condoned a pattern and practice of unjustified, unreasonable and illegal uses of force, beatings and uses of weapons against civilians with mental illness or diminished mental capacities by police officers of the POLICE DEPARTMENT and other local Police Departments within the jurisdiction of the COUNTY. Although such beatings, illegal uses of excessive force were improper, the officers involved were not prosecuted, disciplined or subjected to restraint, and such incidents were in fact covered up with false, premature, official claims that the beatings, uses of force were justified and proper.

74. As a result of the above pattern of acts and omissions, the Defendants CURCIO, PELO, and POLICE OFFICERS, and other police officers within their jurisdiction were caused and encouraged to believe that: (a) civilian persons could be beaten or abused under circumstances which do not require the use of excessive force; and (b) that such beatings and/or use of excessive force would in fact be permitted by the Defendant COUNTY and its branches.

75. In addition to permitting a pattern and practice of improper beatings and abuses of civilian persons with mental illness or diminished mental capacities Defendants COUNTY and POLICE DEPARTMENT have failed to maintain a proper system for investigation of all incidents of unjustified beatings, and excessive use of force by police officers.

76. The COUNTY and POLICE DEPARTMENT have failed to respond to the continuing and urgent need to prevent, restrain and discipline police officers who wrongfully beat, use excessive force and abuse civilian persons with mental illness or diminished mental capacities.

77. The COUNTY and POLICE DEPARTMENT have maintained a system of review of unjustified beatings, and excessive use of force by police offices that has failed to identify the improper brutality by police officers and failed to subject officers who beat and/or brutalized citizens with mental illness or diminished mental capacities, to discipline, closer supervision or restraint, to the extent that it has become the custom of the COUNTY to tolerate the improper beatings, illegal arrests and other wrongful actions by police officers.

78. Upon information and belief, specific systemic flaws in the COUNTY brutality review process include, but are not limited to, the following:

a. Preparing reports regarding investigations of beatings and shooting incidents as routine point-by-point justifications of the police officer's actions, regardless of whether such actions are justified;

b. Police Officers investigating beating and shootings systematically fail to credit testimony by non-police officer witnesses, and uncritically rely on reports by police officers involved in the incident;

c. Police Officers investigating beatings/shootings fail to include in their reports relevant factual information which would tend to contradict the statements of the police officers involved;

d. Supervisory Police Officers at times issue immediate public statements, exonerating police officers for excessive use of force and improper beatings and use of unnecessary and excessive force, before the investigation of the incident by the police department has been completed;

e. Reports in brutality cases are not reviewed for accuracy by supervisory officers. Conclusions are frequently permitted to be drawn on the basis of clearly incorrect or contradictory information, without proper review of medical, forensic and witness information.

79. The foregoing acts, omissions, systemic flaws, policies and customs of the Defendants COUNTY and POLICE DEPARTMENT caused the Defendants CURCIO, PELO and POLICE OFFICERS to believe that brutality and other improper actions would not be aggressively, honestly and properly investigated, with the foreseeable result that officers are most likely to use excessive force in situations where such force is neither necessary nor reasonable.

80. As a direct and proximate result of the aforesaid acts, omissions, systemic flaws, policies, practices and customs of the Defendants COUNTY, POLICE DEPARTMENT, CURIO, PELO, and POLICE OFFICERS unjustifiably attacked, beat, brutalized, thus causing injury to Plaintiff's decedent MICHAEL J. SCIORTINO, all in violation of his civil and constitutional rights and he has suffered with the loss of his life as well from physical injury, psychological harm, mental distress, humiliation, embarrassment, fear, and being prevented from attending his usual duties and his life as a father and citizen, all to his damage and to the pain and damage of those that survive him.

81. Defendants COUNTY, and POLICE DEPARTMENT were reckless, negligent or deliberately indifferent in their training, hiring and supervision of their police officers, including Defendant Officers, with respect to the use of force against mentally ill persons, the inquiry of mentally

ill persons, the bringing of charges against the mentally ill persons and the recognition and preservation of the civil and constitutional rights of mentally ill persons.

82. Defendants COUNTY, and POLICE DEPARTMENT promoted and enabled procedures permitting the type of actions taken by Defendant POLICE OFFICERS, which resulted in the violation of MICHAEL J. SCIORTINO's constitutional and civil rights and physically harmed him. Defendants COUNTY, and POLICE DEPARTMENT failed to promulgate procedures and/or monitor and enforce compliance with established policies and procedures for the handling of mentally ill or emotionally disturbed persons, which resulted in the violation of MICHAEL J. SCIORTINO's constitutional and civil rights, as well as physical harm to him.

83. As a result of the actions and failures of Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS did not employ appropriate procedures to physically safeguard MICHAEL J. SCIORTINO, especially with respect to their preparation for and initial contact with him, attempts to contain him, attempts to take him into custody, failure to use protective devices, use of excessive force, and failure to employ the assistance of family and health care professionals on premises to minimize the escalation of inappropriate physical force used against him.

84. Defendants COUNTY and POLICE DEPARTMENT had a duty to investigate and discipline its Police Officers for misconduct, including any of the Defendant OFFICERS, with respect to their use of excessive force against mentally ill persons, their inquiries of mentally ill persons, the bringing of charges against mentally ill persons, and the recognition and preservation of the civil and constitutional rights of minority persons. Defendants acts and omissions accordingly constituted a municipal policy of unequal protection and denial of due process, in violation of 42 U.S.C. §1983.

85. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00)

dollars . As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT FOUR
NEGLIGENCE

86. Plaintiffs repeat, reiterate, and reallege the allegations set forth in ¶¶ 1 through 94 inclusive, of this Complaint, with the same force and effect as though herein fully set forth.

87. In the acts complained of herein, and in attempting to contain the frail, unarmed MICHAEL J. SCIORTINO, the Defendant POLICE OFFICERS acted negligently, in that they had a duty to act reasonably and responsibly and not to act in a manner which would cause injury to MICHAEL J. SCIORTINO. Defendant Officers breached said duty to act with reasonable care, prudence, and caution, when they unnecessarily beat, and otherwise abused Plaintiffs' decedent in such a way that resulted in his death.

88. Defendant Officers further had a duty to act as would prudent police officers, by not taking actions which would endanger the life of MICHAEL J. SCIORTINO and other persons similarly situated, had a duty to act within the scope of their authority, and to use reasonable precaution and not to using excessive force or otherwise violate the Constitutional and civil rights of Plaintiffs' decedent. Defendant Officers, in their actions, breached those duties.

89. In derogation of their duty, and with deliberate indifference, malice and recklessness, Defendant POLICE OFFICERS failed to heed the advices of the persons who had summoned them to the premises and who greeted and provided them access to the decedent at the premises, with respect to the mental state of the decedent who was, at that time, suffering from mental disease/disability.

90. In further derogation of their duty, Defendant POLICE OFFICERS failed to follow established and widely recognized law enforcement policies and procedures with respect to the handling

of persons suspected to be or who are actually mentally ill or emotionally disturbed or, alternately, Defendants COUNTY and POLICE DEPARTMENT failed to develop and implement adequate policies to establish appropriate handling by its police officers of aided persons who are mentally ill or emotionally disturbed.

91. The Defendants COUNTY, and POLICE DEPARTMENT, their agents, employees and/or servants violated the rights of MICHAEL J. SCIORTINO secured under the Fourteenth Amendment and 42 U.S.C. §1983, and were careless, negligent and reckless in the care and treatment of MICHAEL J. SCIORTINO in failing to have properly trained personnel respond to the aforementioned emergency; in failing to properly respond to the situation existing at that time and place.

92. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00) dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT FIVE
BATTERY

93. Plaintiff NICHOLAS SCIORTINO repeats and reiterate and re-alleges each and every allegation contained in paragraphs 1 through 106 of this Complaint, with the same force and effect as though fully set forth herein.

94. The Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO, and POLICE OFFICERS lacked any legal or lawful basis, probable cause, or justification to shoot, beat, brutalize, arrest and seize Plaintiff's decedent.

95. The Defendants CURCIO, PELO, and POLICE OFFICERS having illegally and unlawfully beat, brutalized, seized and arrested Plaintiff's decedent, violated the rights of the Plaintiff's

decedent as well as the laws of the State of New York.

96. Defendant OFFICERS, wrongfully, unlawfully and without privilege, consent, emergency, necessity, license or justification, forced Plaintiff's decedent to endure beating, and physical harm, to the severe extent of injury. Plaintiff's decedent at no time consented to such abuse or seizure of his person or property by Defendant POLICE OFFICERS. Said actions by the Defendant officers were intentional and aimed at injuring and causing Plaintiff's decedent to suffer harm, discomfort, pain and humiliation.

97. Plaintiff's decedent was held against his will, threatened, intimidated and was caused to suffer the intense fear of bodily harm, to the extent that an objective person in Plaintiff's decedent's position would be left in fear of such bodily harm. Plaintiffs' decedent committed no violation or crime and was not charged with any violation or crime.

98. Defendant OFFICERS did intentionally, beat, threaten, intimidate and cause the death of Plaintiff's decedent, while placing him in fear of imminent danger and or bodily harm prior to and during said shocking and beating. Plaintiff's decedent, MICHAEL J. SCIORTINO, in fact was subjected to great pain and physical injury by virtue of Defendant OFFICERS' conduct, including but not limited to the unwarranted, unjustified, excessive, abusive wrongful and illegal use of excessive force on the Plaintiffs' decedent by the Defendant OFFICERS.

99. As a result of said and battery, Plaintiff's decedent suffered, physical harm, great emotional and psychological harm, anxiety, fear, terror, humiliation, and degradation all as a direct result of Defendant OFFICERS' wrongful, unjustified and illegal conduct.

100. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00)dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages

sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT SIX
FALSE ARREST AND FALSE IMPRISONMENT

101. Plaintiff NICHOLAS SCIORTINO repeats and reiterate and re-alleges each and every allegation contained in paragraphs 1 through 113 this Complaint, with the same force and effect as though fully set forth herein.

102. The COUNTY and Defendant POLICE OFFICERS lacked any probable cause to hold and detain the Plaintiff's decedent in custody for any period of time, no less the prolonged period of custody during which time Plaintiff's decedent was handcuffed while being taken out of the Oyster Bay premises, despite having been subdued, injured and barely conscious at said time.

103. Without such probable cause, Defendant POLICE OFFICERS wrongfully used physical force to detain the Plaintiff's decedent in handcuffs and in police custody while being transported to the Nassau University Medical Center. Upon information and belief, Plaintiff's decedent was further handcuffed and surrounded by officers in a room, and kept there under the supervision and knowledge of the POLICE DEPARTMENT, despite his not acting in an unlawful manner.

104. The false arrest and false imprisonment of Plaintiff's decedent not only a violated Plaintiff's decedent MICHAEL J. SCIORTINO's civil rights under federal law, but violated her rights under the laws of the State of New York, which are herein invoked. This false arrest and false imprisonment were brought about and caused by the actions of Defendant POLICE OFFICERS and the same were a clear and intentional abuse of process, causing Plaintiff's decedent severe damage.

105. As a result of said false arrest, false imprisonment and continued false arrest, including being transported to Nassau University Hospital in handcuffs and with POLICE OFFICERS present, Plaintiff's decedent's ability to receive proper medical help was compromised by the Defendants, and

MICHAEL J. SCIORTINO was caused to suffer pain, great emotional and psychological harm, anxiety, personal fear, and damage.

106. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00) dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT SEVEN
ON BEHALF OF MICHAEL J. SCIORTINO
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

107. Plaintiff NICHOLAS SCIORTINO repeats and reiterate and re-alleges each and every allegation contained in paragraphs 1 through 121 of this Complaint, with the same force and effect as though fully set forth herein.

108. The Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS, through their conduct, acts and omissions as set forth in the above pleaded allegations, acted outrageously and beyond the bounds of decency, for their above-stated, respective roles in (a) the wrongful detainment, punching, beating, stomping, manhandling, false arrest, prolonged captivity, intimidation, public humiliation, resulting in the death of the Plaintiff's decedent, MICHAEL J. SCIORTINO, and (b) the concealment, cover-up, and failure to redress the wrongs done to Plaintiff's decedent, MICHAEL J. SCIORTINO.

109. The Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS, committed the above stated reprehensible, extreme and outrageous conduct against Plaintiff's decedent, MICHAEL J. SCIORTINO, with full knowledge that their conduct would cause severe and extreme emotional harm to MICHAEL J. SCIORTINO, and to his close family members, and

with such extreme emotional harm being intended.

110. Said extreme emotional harm, with psychological and physical symptoms manifesting therefrom, did in fact occur in this case, in that the Plaintiff's decedent was debilitated, terrified, humiliated, and caused to suffer fear for his life and anguish, by the Defendant POLICE OFFICER' s violent acts committed against him.

111. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00) dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

AS AND FOR COUNT EIGHT
ON BEHALF OF NICHOLAS SCIORTINO
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

112. Plaintiff NICHOLAS SCIORTINO repeats and reiterate and re-alleges each and every allegation contained in paragraphs 1 through 124 of this complaint, with the same force and effect as though fully set forth herein.

113. The Defendants COUNTY, POLICE DEPARTMENT, CURCIO, PELO and POLICE OFFICERS through their conduct, acts and omissions as set forth in the above pleaded allegations, acted negligently, outrageously and beyond the bounds of decency, for their above-stated, respective roles in (a) the wrongful detainment, punching, beating, manhandling, false arrest, prolonged captivity, intimidation, public humiliation resulting in the death of the Plaintiff NICHOLAS SCIORTINO 's father MICHAEL J. SCIORTINO, and (b) the concealment, cover-up, and failure to redress the wrongs done to Plaintiff's decedent, MICHAEL J. SCIORTINO, with the resultant effect that Plaintiff NICHOLAS SCIORTINO has been caused to suffer great pain, shame, public humiliation and anguish, in having his

father brutalized at the hands of the Defendant POLICE OFFICERS go unpunished, unredressed, defended, concealed and supported, through the actions of the Defendants COUNTY, POLICE DEPARTMENT, and POLICE OFFICERS.

114. The Defendants POLICE OFFICERS, POLICE, COUNTY, in committing the above stated reprehensible, extreme and outrageous conduct against Plaintiff's decedent, MICHAEL J. SCIORTINO, knew and/or should have known that their conduct would cause severe and extreme emotional harm to MICHAEL J. SCIORTINO, and to his close family members.

115. Said extreme emotional harm, with psychological and physical symptoms manifesting therefrom, did in fact occur in this case, in that the Plaintiff, NICHOLAS SCIORTINO , personally suffered from emotional exhaustion, and other emotional injuries , from having suffered the loss of his father the loss of his companionship, guidance, support. Plaintiff NICHOLAS SCIORTINO further suffers the emotional and physical distress of intense stress, anguish and psychological trauma, knowing that his father, Plaintiff's decedent MICHAEL J. SCIORTINO, was debilitated, terrified, humiliated, and caused to suffer fear for his life and anguish, by the violent acts committed against him.

116. That by reason of the foregoing, Plaintiff NICHOLAS SCIORTINO , as Executor of the Estate of MICHAEL J. SCIORTINO, has been damaged in the sum of ten million ($10,000,000.00) dollars. As a result of Defendants' acts, Plaintiff suffered, and is entitled to, damages sustained to date and continuing as well as punitive damages, costs and attorney's fees against the Defendants, to be held jointly and severally liable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants:

a. On the Count One in the sum of TEN MILLION DOLLARS ($10,000,000.00);

b. On the Count Two in the sum of TEN MILLION DOLLARS ($10,000.000.00);

c. On the Count Three in the sum of TEN MILLION DOLLARS ($10,000,000.00);

d. On the Count Four in the sum of TEN MILLION DOLLARS ($10,000,000.00);

e. On the Count Five in the sum of TEN MILLION DOLLARS ($10,000,000.00);

f. On the Count Six in the sum of TEN MILLION DOLLARS ($10,000,000.00);

g. On the Count Seven in the sum of TEN MILLION DOLLARS ($10,000,000.00);

h. On the Count Eight in the sum of TEN MILLION DOLLARS ($10,000,000.00);

I. Punitive damages in the sum of TWENTY MILLION DOLLARS ($20,000,000.00);

j. Award attorney's fees and costs of this action to the Plaintiff, pursuant to 42 U.S.C. § 1988; and award such other and further relief as this Court may deem appropriate.

k. Injunctive relief, requiring defendants to correct all past violations of federal and state law as alleged herein; to enjoin defendants from continuing to violate federal and state law as alleged herein; and to order such other injunctive relief as may be appropriate to prevent any future violations of said federal and state laws;

l. An order granting such other legal and equitable relief as the court deems just and proper

A JURY TRIAL IS HEREBY DEMANDED

Dated: Hempstead, New York
April 15, 2011

Respectfully submitted,

LAW OFFICES OF
FREDERICK K. BREWINGTON

By ______________________
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